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AUTHOR Holden, Matthew, Jr.
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ABSTRACT

One of the major objectives of the University Urban Interface Program (UUIP) at the University of Pittsburgh was to develop some long-range goals for the city of Pittsburgh to improve the community. This document is specifically concerned with law and order in the metropolitan area with regard to reforms needed in the machinery. If people were to make absolutely open the objectives that they wish the law and order machinery to serve, there would probably be 5 objectives: (1) deter people from committing offenses averse to the rights, property, and physical freedom of other people by making an example of the present offender; (2) protect other people from the present offender by putting him in jail or by using capital punishment; (3) provide some psychological satisfaction to the victims by imposing some obvious pain and suffering upon the offender; (4) actually making the offender himself a better person; or (5) provide a framework of reconciliation between people who are in conflict. This paper presents a discussion of crime and severe social conflict that the criminal law system is often called on to deal with; some major impediments in the history of criminal law improvement efforts; and some options for future consideration. (Author/HS)

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UNIVERSITY FORUM

BACKGROUND PAPER

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NOVEMBER 18, 1971

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LAW AND ORDER IN THE METROPOLITAN AREA:

Issues and Options

Matthew Holden, Jr.

November 1971

Albert C. Van Dusen, Ph.D.
Secretary of the University
(Vice Chancellor)
Principal Investigator

Robert C. Brictson, Ph.D.
Director of Research Programs

INTRODUCTION

Universities have a self-image, an idea about themselves, that they are and should be "open" places. That is, they should be places of free discussion and inquiry. There is no more appropriate way for a university, in its relation to the metropolitan area, to realize this self-image in practice than by providing a forum for rational and open discussion on law and order. For it is one of those few policy subjects which is critical, but virtually never the subject of an open and rational debate and discussion about policy objectives and policy options. At the same time, it is a critical subject from the point of view of the very meaning and existence of a community. When people try to define the metropolitan community, or some smaller community, they are often likely to refer to obvious physical or economic facts: the range within which the Pittsburgh Post-Gazette and the Pittsburgh Press circulate; the density of telephone calls from a central point; the service areas of the banks; the territory that "looks" and "feels" urban when you go through it, and so on. Somehow, all this relates to the idea of interdependence. People thus are saying that if an area's population and economic activities are somehow interdependent, it is a community.

That is not true!

The web of trade, the frequency of telephone calls and mail deliveries, the shortness of the driving time from one area to another, or even a large number of people living in a small area related to each other does not automatically constitute a community. This is self-evident if we chose some

examples far enough from home that they do not disturb us. It is patent that the Catholic and Protestant residents of Belfast in Northern Ireland do not constitute a community, for if they did they would not be burning each other's houses. The same point can be made for Greeks and Turks in Cyprus; or for Arabs and Jews in present day Jerusalem.

It is perfectly apparent that the industrial history of Pittsburgh, the confrontation between labor and management, was not an exercise in community decision-making but a form of social warfare. It has seemed equally apparent, in recent years, that the idea of a Pittsburgh community encompassing blacks and whites had very little reality to it. I say this not to debate the racial issues, at least not now, but to make the more important point; the fact that people are engaged in some tight relationship with each other does not automatically convert them into a community. Imagine battlefield enemies in wartime!

A community presupposses order, and it presupposes some degree of shared moral order--of which the legal order is often the most practical expression. (By shared moral order, I mean that a grouping is clearly a community if the various participants in it not merely accept the presence of the others, but to some degree regard that presence as valuable, and would to some degree take measures to maintain that presence, and to extend the protection of the community to any of these members.) That is, the practical reflection of the shared moral order in some workable system of law -- some system of more-or-less rational rules and understandings, for which there is fairly wide support, and for which it is possible to bring together power in support if that becomes essential.

It is thus appropriate to place some emphasis on the questions of "law and order", in an assembly oriented toward the discussion of "community goals" in a metropolitan area.

Law and order, in this sense, is what the metropolitan areas of the United States have sledom, if ever, had and what constitutes a goodly portionof "the metropolitan problem" today. One further idea underlies all this and should be raised to explicit consideration: the concept of law and order, used in this way, means a substantial equality in the rights and obligations of citizens throughout the metropolitan area. It is vitiated by arbitrary and invidious discrimination, e.g. by an enforcement policy which treats the claims of people differently depending on whether they are in one part of the metropolitan area instead of another.

If people were to make absolutely open the objectives which they wish the law and order machinery to serve, there would probably be five objectives:

(1) deter people from committing offenses averse to the rights, property, and physical freedom of other people by making an example of the present offender;

(2) protect other people (usually called "society") from the present offender by putting a wall around him, or by eliminating his very physical existence (capital punishment);

(3) provide some psychological satisfaction to the victims (or those who identify with the victims) by imposing some obvious pain and suffering upon the offender (or upon those identified with him);

(4) actually make the offender himself into a "better" person; or,

(5) provide a framework of reconciliation between people who are in conflict.

At the moment, some of these objectives are more popular than others, although popularity and unpopularity depends on whom you hear. Popluarity and unpopularity depends on what the offense is, as interpreted by the rest of the community. But these all enter the operations of the criminal law system, and the demands we make upon the criminal law system, hour by hour. The ramifications

are so extensive that they cannot all be covered here. Accordingly, I simply present here three things: two central problems ("crime" and "severe social (group) conflict") that the criminal law system is often called upon to deal with; some major impediment in the history of criminal law improvement efforts (and some gaps in that effort); and finally, some options for future consideration.

TWO PROBLEMS IN LAW AND ORDER

Later on, I shall argue that certain difficulties in law and order are directly related to the agencies of law and order themselves -- that they have come out of the necessities of the staffs of these organizations, etc. But for the moment, one might assume that the agencies of law and order were not troubled or troublesome in this way. They would still have to deal with two problems: "crime" in the more or less conventional sense and "severe social (group) conflict", of which the presently most advertised version concerns racial cleavage.

Every day's newspaper brings to the attention of anyone who wants to notice the amount of drama associated with "crime waves." We are told constantly of a "rising tide of crime", and there is much reason to believe that much of what we are told is true. Let us stop to consider exactly what is being considered. So-called "street crime" usually means those felonies that are used by the Federal Bureau of Investigation as the basis of its Uniform Crime Reports and of the Crime Index contained therein. These seven felonies are in the order of their number:

Burglary
Larceny ($50 and over)
Auto theft
Robbery
Aggravated assault
Forcible rape

Murder and nonnegligent manslaughter.

In the order of the attention they attract from most people, this probably should be reversed (but that is a point to which I will return later.)Obviously, this by no means accounts for all crime which includes other acts that might constitute felonies, but are not included here (arson, embezzlement, etc.) and, of course, misdemeanors. While the figures vary from year to year, the total number of Index crimes is about one-fifth of the total number of all arrests.

Perhaps the first point that one should recognize is the enormous variation in people's attitudes toward the offenses which are defined by statute or ordinance as crimes. In legal terms, the felony-misdemeanor distinction is fundamental, as is the distinction between crimes against persons and crimes against property, for which the Federal Bureau of Investigation substitutes the classification "crimes of violence" and "crimes against property." One really big question, that helps to make clear what the "community" is, or if a "community" exists, is this social evaluation of the offense. This is vital in the operations of the criminal law machinery. The criminal process, in the ordinary sense, involves the public officials or agents responsible for making arrests, bringing charges, or otherwise conducting the enterprise; the person who is the arrestee, the defendant, etc.; and the rest of "the community".

Broadly speaking, common sense permits us to believe that people ordinarily look at the legally-defined offense (and the person alleged to have committed it) in one of four ways.

1. Some offenses are "ordinary" in that the alleged offense poses little or no threat to the rest of the "community", as the rest of the community sees the situation. People may have ideas about what "justice" would require in the case of a murder trail arising from a love triangle, but few people are likely to believe that the murderer (real or alleged) constitutes a threat to themselves or is likely ever to constitute a threat to themselves. Whether he goes free or not is, thus, hardly more than a matter of spectator interest.

2. Some offenses are "repugnant" in the sense that people are grossly upset by them, even if those offenses constitute no threat to the property or liberty of such persons. In some respects, this is the case of the so-called "crimes without victims", i.e. sex acts prohibited by law but agreed to on the mutual consent of the participants, the consumption of narcotics, or the practice of abortion. There is a certain sense in which, even in a secular society, such acts are the functional equivalent of desecration. This clearly would be so, for most people, if a group of young, long-haired, dirty-overalled men and women walked upon and burned an American flag at high noon before the Penn-Sheraton Hotel. To many people the psychological impact of such an act would be "worse than" the murder arising from the love triangle.

3. Some offenses involve the ill-understood problems of "organized crime", which is likely to involve a complicated mix of felonies (including, but not limited to Index crimes), misdemeanors and perfectly legal actions. All are likely to add up, however, to three major features -- as near as we know anything about it.

a. Organized crime is not some spur of the moment affair, but a form of business conducted beyond the approval of the law.

b. It is likely to involve various forms of private coercion (including some killing) that is formally proscribed by the law -- and is thus highly "political" in the sense of negating the public law.

c. Because money is, however, a fluid form of human action, it is also likely to involve -- indeed to require -- the development of a concentrated political position for the sake of protecting the entrepreneur's investment,[1] just as the regulatory process in legitimate commerce requires a certain amount of protecting the entrepreneur's position. I would repeat that there is all too little assurance as to what is myth and what is reality concerning organized crime, but one might believe that a certain political enervation is inevitalbe. If we think that people will seek to protect their interests politically, whatever

they may be, and if we think that some people (the participants in organized crime) also have a certain muscle and a willingness to use it, then we are likely to be circumspect about attacking whatever we understand to be their vital interests. (Professor Bert Swanson, a political scientist at Sarah Lawrence College, is one of the few people to have gone on the public record with some assertion of experience, which -- unlike most other recent witnesses -- he did not get by himself being a renegade participant, and thereby possibly giving testimony in his own narrow interest. Swanson was running a community seminar in Westchester County, comparable in some respects to the assemblies now being conducted at Pittsburgh, though more extended, I gather. At some point, he gave them up because, he said, members of the seminar found that the actions they were taking contravened underworld interests, and put the seminar-participants themselves in physical danger.)

4. Finally, there is some point at which politics may become criminal. Under most circumstances, we are talking about crime becoming political, i.e. that people purposely engaged in illegal activity undertake political methods to protect themselves. Politics may also become criminal when persons with a political intent conclude that they cannot serve their political purposes within the constraints of the law.

This classification is somewhat rough, but it provides an entree to the point that the community evaluation of the real or alleged act is different, depending on whether the community interprets the act in one or another of these ways, and provides an entree to discussion of the criminal law machinery, which is designed chiefly to handle crime in the ordinary sense, and which actually handles only an important fraction of even that aspect of crime.

However, we recognize that the "law and order" problem is more than a problem of ordinary criminal law administration. It involves severe social

(group) conflict as well. In the present day, this is most clearly a racial problem, although it may be other kinds of problems at various times.

The metropolitan area of Pittsburgh, as virtually every metropolitan area of the North, is one physical settlement, but it is not one community. It is two communities, drawn on racial lines with sufficient rigidity that one could almost borrow the old language of Benjamin Disraeli and refer to them as "the two nations."

This is particularly important to notice for at least three reasons.

1. In so far as ordinary criminal law problems are concerned, people are likely to assume that whatever group is the "subordinate" population is the source of the criminal law problems that the dominant group perceives for itself, and thus to try to make the criminal law machinery into a containment machinery for this subordinate population. In reaction, the members of the subordinate population are much more likely to deny that they have any common interests with the members of the dominant population, and to treat all criminal law questions as questions of their own subordination only.

2. The "sense of justice" of the subordinate population (in this instance, black) is likely to be grossly offended. That population can easily perceive that it itself is the object of a good deal of intensive inspection, surveillance, and regulation by the criminal law authorities. But is can also see, or believe that it sees, that such inspection, surveillance or regulation is in the interest of persons and groups outside itself. It can perceive, at the same time, that its own vital interests are seldom given a degree of interest and attention comparable to its own assessment of their importance.

The two preceding paragraphs refer to situations in which the dominant popular interpretation of what crime is, and what is serious about it, precludes the possibility that the interests of a somewhat separated population could be taken into account in a manner that population could treat seriously.

3. If group tension is very high, e.g. some emergency condition, then social dispute of this kind becomes a criminal law problem, simply because other public decision-makers will tend to vacate -- tend to be forced to vacate -- the field. At this juncture, the seemingly political problem is made into one to be handled by the criminal machinery.

In the ensuing pages, I will argue that we have hardly begun to think seriously about criminal law problems of the conventional sort, and this is even more dramatically so for the management of social conflict. (There is a practical indicator of this point. In virtually any city, there is something called "human relations commission." Ask how important the head of that commission is, relative to the importance of the police chief. There is a second indicator. Most police chiefs and district attorneys have expressed some concern about such a group as the black panthers. But which ones have paid serious attention to those private groups that collect and train with bazookas, and machine guns, not pistols and rifles?)

IMPEDIMENTS TO CRIMINAL LAW IMPROVEMENTS

The problem of "crime" has been the subject of extensive talk by some professional law enforcement people, and by some knowledgeable lay observers and critics, for at least fifty years. (I would point that there were at least seven city studies (Baltimore, Chicago, Cleveland, Cincinnati, the combined area of Hartford-Bridgeport-New Haven, Memphis and Philadelphia) and at least ten state studies (California, Georgia, Illinois, Michigan, Missouri, New York with three studies, Oregon with a study directed by the Professor Wayne L. Morse, Pennsylvania, Rhode Island and Virginia) between 1922 and 1929.) Moreover there is no doubt that some improvement in practice (and a good deal of

refinement in ideas) has come in that time.

The most important impediments to change are political. I do not mean "political" in the party sense, although that is surely relevant sometimes. (It is not always true that "partisan politics" is "bad" for "justice". The famous shake-up of the Chicago Police Department, that brought Orlando W. Wilson to that city after an extensive collaboration between policemen and burgulars. was made public depended on party conflict. Except for the fact that the State's Attorney (prosecutor) at the time was an ex-Democratic, then Republican, adversary of the City Administration, the matter would almost surely have been hushed up.)

But the "politics" I have in mind deals first with the internal organizational problems of the criminal justice system, which one can only touch upon. These are problems of "politics" in the broad sense that they affect the way in which men and women act deliberately to increase their influence or to break down somebody else's influence, or to come to an understanding so that they do not have to fight about it thereafter.

There must have been, by now, hundreds of consultant reports and studies on urban police departments, recommending the increase in the number of police precincts, recommending the consulidation of precincts, recommending one-man patrol cars, recommending foot patrol, recommending two-man patrol cars and so on. Moreover, these sorts of organizational recommendations undoubtedly have some merit, in various circumstances. But the organizational problems that tend to impede improvements in criminal law administration are of a different sort.

1. <u>One of the most critical features of criminal law administration is the atmosphere of extreme secrecy, particularly in police work</u>. The studies of police work nearly all testify to this pattern, particularly when they are

done by people who have had just enough opportunity to observe police work that they can begin to learn how little they do know. Let me illustrate the point, not prove it, by reference to several experiences of my own at the margins of police departments.

a. Within the last several years,* I was interested in studying, statistically, the frequency of use of trial board procedures for internal discipline and the results of such procedures. What I wanted to know was: (a) what sorts of matters constituted the bulk of trial board actions? (b) whether the same individuals were repeaters or not? (c) what dispositions the boards made of such cases, etc. At that point, I had no interest in knowing the names of the officers in question, and could easily have conceived a coding system behind which individual identities would have been held secure. (Moreover, it made sense to do this -- both for the reputations of individual officers and in the event -- however unlikely -- that some of them still might be subject to legal action, as a result of something that might have turned up in my study). Since the public records of the department were not adequate for this purpose, it was necessary to try to secure departmental cooperation. That proved impossible, for I had only two realistic avenues. One was through a former assistant commissioner, who actually knew the record system very well but was himself no longer in the department, and the other was through a former executive assistant to the commissioner, who might not have known the record system so well, but who had proved politically very skillful in the job. Each reported back to me that he could find no way to get the appropriate records opened.*

b. Something of the same atmosphere was conveyed ten years ago, when I

* I will purposely leave this vague since I have lived and worked in at least six cities in the past ten years, and I think no one is likely to guess with assurance which city I mean here.

*I will leave aside the question whether my friends could have gotten those records for me if "they had wanted to badly enough." Either they could not at all, or it would have cost them too much with their former departmental associates, either of which makes my point.

was teaching at Wayne State University in Detroit. As it happened, one patrolman was taking the undergraduate urban government course, and came to class in uniform and with weapon. But another man of the same general age always sat next to him in civies, and the two were noticeable since the median age of the class probably was around 19-22, while they were clearly closer to 30. I guessed, but did not know, that the second man was also an officer. That proved right, for the first time he came to see me on a class matter, I asked what he did. Although we were in the privacy of a small, fully-enclosed office, with the door shut, he looked about furtively, pulled his chair as close to my desk as he could get, and whispered "I am a detective in the Detroit Police Department." As I got to know him better, and I got to know them both better in the next year or two, he would discuss more candidly in private the implicit lessons of "keep your mouth shut" and "mind your own business" that he had learned as a young officer in the department.

c. Police secrecy appeared to be relaxing somewhat in the early 1960's, and there even appeared to be some conception that outside observers--if not patently anti-police on principle--might produce understandings that would actually lend to the improvement of police work. However, the best testimony I can get (which is indeed private opinion and not scientific evidence) is that this tendency is reversing itself, that outside observers are much less likely now to secure the cooperation of police administrators or working policemen than was the case a few years ago.

Why is this significant? Chiefly,because it means that the police organization will, should this tendency reinforce itself, once more become an insulated organization, reproducing in its members a very narrow set of values and work orientations, diminishing its potential effectiveness precisely because it is isolated from a wide range of public interests, values and competences. The practical consequence is that members of the police enterprise are more likely than many other people (but this is not dissimilar for all occupations),to hold

very similar definitions of "good" and "evil," very similar definitions of "competence," and by that token to exclude the element of dissidence and reasoned debate that makes for change in organizations.

2. There are some important problems which, of course, appear to be inherent in the conditions of work. Everyone recognizes that the job is dangerous, although how dangerous is undoubtedly difficult for a layman to know. Moreover, most careful observers recognize that the policeman on the line is often assigned to his dangerous enterprise, without any useful guidance, supervision, or direction. (In one of the several cities it has been my opportunity to observe, the most vigorous complaint of the patrolmen's association president was that, in difficult moments, the command officers were likely not to be immediately on the street with their subordinates. Hence, subordinates were exposed in two ways: (a) they were exposed to situations in which they sometimes had less experience than their not-present seniors; and (b) they were exposed to criticism in the event that they made decisions later determined to be "wrong" or "controversial." Let us add another consideration. To some degree, the working policeman is likely to encounter people who are themselves emotionally ready to challenge the man's authority and prestige. From this, comes the work culture that says "be tough or they'll get you" (which is not obviously wrong) and "you have to make them respect you." The question, there, is how the policeman translates these various aspects of his craft and its folklore into working habits on the job.

3. It is important to notice that the police operation is, to a large degree, a regulatory enterprise, comparable to the agencies of economic regulation. It is patent that a police organization is not expected to enforce every law to the letter, and it is also patent that a good many activities go on about which policemen generally cannot be ill-informed unless they are blind and stupid. That is, it is not possible for everyone else to know where to bet and not to

have the policeman who works the area also fail to know. Thus , we come into an area where evidence is hard to come by. Yet we must suppose that much police activity is comparable to regulatory activity, because its overall purpose is to assure that it does not get "out of hand." But it is not possible--on present resources--for a law enforcement organization to eliminate the enterprise altogether. Hence, what is more likely is that it engages in a certain degree of cooperation at arms' length.

4. It is important to notice, as well, that this is a job and a career, a means of earning income and improving net worth. The theory is often advanced that the problems in this area, described as "corruption," would be eliminated if police compensation were sufficiently high. The problem of compensation is undoubtedly real, but the question of "how high is sufficiently high?" requires some discussion. If economic advancement is an incentive to which men respond, and the evidence is good that it is, then we may suppose that men will respond not only to improvements in current income, but to opportunities to increase net worth. From this point of view, we return to the regulatory conception before mentioned. Authority to regulate activity that might produce money is best exercised, not to eliminate the activity, but to stabilize the business relationships. From that point of view, what we call "police corruption" is a form of franchising, comparable in spirit--though not in legal status or precise economics--to the franchising of radio or television stations. The regulatory authority exercises its jurisdiction for the purpose of preventing wasteful competition.

5. Finally, we should take account of one countervailing force that has not been mentioned. We have , like most other people, referred to the police as if they were one homogeneous group. This is obviously not true, and is necessary only because one cannot qualify every statement as soon as it is made. One of the significant aspects of police work is the amount of complicated and cross-cutting activity that is reflected when one talks to policemen. The

formal theory of the department is a chain-of-command structure, and the chain-of-command sometimes works. But there are other groupings. In the past, according to a number of observers (such as those who prepared the Cleveland Crime Survey in the 1920's) one of the important informal groupings in the department was between Masons and Catholics. This was not a mere "social" grouping in the sense of who associated with whom off the job, but a predictor of who was likely to promote whom. I have not heard that that one exists today, but some other clique relationships are apparent: cliques according to work grouping (uniformed and detective), cliques by rank (the rank most subject to counterpressures appears to be that of lieutenant), the nationality cliques which are so apparent in the biggest of the departments (New York) and which appear to have some role in others. And, of course, the most important clique relationship in cities such as Pittsburgh is the racial line. It is <u>not</u> true, by any means, that black policemen and white policemen divide neatly and completely. And the field studies for the National Crime Commission found about 10% of the officers in a black precinct expressing attitudes which, had they been expressed by white officers, would have been called "racist." Nonetheless, we are not lacking, in most metropolitan areas, for a fairly clear demarcation and have even been given glimpses of situations in which direct confrontation between black and white policemen themselves seemed likely.

Let us recount those factors that affect organization, without claiming that they are by any means all the effective factors: cleavage lines of various sorts, of which race is probably the most influential at the moment; the economic self-interest of the officer; the regulatory character of the police enterprise; the conditions of work that enhance concern with safety and self-esteem; and the professional culture of secrecy. Are these important because they are found nowhere else in the world? No. <u>They are important merely because they are factors in the work of the police organization that prevent a truly rational and sustained focus on the improvement of criminal law administration itself.</u>

However, we should note something else. No one should think of criminal law administration as simply a police work problem. Long before people started to talk about "systems analysis", it was apparent that criminal law administration involved a complete set of interlocking chains, so to speak, with the police on one end and the probation and parole authorities on the other.

I am not able to discuss all these here, for lack of knowledge and of space. But it may be important to call attention to the particular importance of the prosecutors. About 80% to 90% of all arrestees are disposed of before they go to court, and the role of the prosecutor is so important in this that he might well be called the working policeman's actual court of appeal. Apart from his own knowledge, the law is what the prosecutor tells the policeman that it is, until we come to the less frequent case in which the trial judge tells the policeman something else. The prosecutor has the technical power usually (1) to order arrests as he may choose; (2) to initiate and close out investigations as he may choose; (3) to decide which cases will and will not be brought to court; (4) to decide what evidence shall be presented and, subject to decisions by the judge, in what manner the case shall be presented and, on occasion, to offer recommendations to the court as to the nature of the sentence.*

The prosecutors' decisions are not merely important, but based upon a discretion that he exercises without administrative review in most states[3] and that he exercises in a private form of decision-making that most people cannot possibly see. (Pennsylvania is one of the states in which the district attorney is, at least in form, subject to some oversight or supersession by the State Attorney General.)[4] Because of the elasticity of the prosecutor's powers,

*The district attorney, prosecuting attorney, state's attorney (or whatever the title may be in various jurisdictions) is also normally the county's principal (sometimes exclusive) adviser in civil matters.

the person or group that comes to his unfavorable attention may, by that very fact, have come close to suffering an actual penalty, with or without a formal charge, let alone a conviction. If you yourself know that you are being investigated by the prosecutor, there is a certain likely psychological insecurity. If the investigation gets very far, the chances are that word will leak out, and your reputation is subject to challenge by all those who think "there must be something to it." If the prosecutor actually authorizes a charge to be brought, then you are subject to the time and money costs of a defense. Finally, if you are actually convicted, you will lose some portion of your property (if only a fine), some of your freedom (even a suspended sentence), or in the extreme case, loss of life.

The problem of criminal law reform has been partly obstructed by our inattention to this office and its actual working relationships. In the past, there was a good deal of concern about "unfair" prosecutors, but this often led to recommendations which themselves did not seem pointed to the allegation.

The late Judge Jerome Frank once wrote that "to rid ourselves of unfair prosecutors, we should not permit any man to hold that office who has not been specially educated for that job and passed stiff written and oral examinations demonstrating his moral and intellectual fitness." Judge Frank's view is in broad agreement with most of those who have taken an interest in criminal law reform over the past forty to fifty years.

Leaving aside "technical" questions such as who would determine "moral" fitness and how that would be evaluated, Frank's basic view is that prosecution should be professionalized. In reality, there seems very little evidence that the "professionalism" argument is related to the quality of law enforcement, much, one way or the other. Instead, all this amounts to is an argument between the leaders of political parties and the leaders of the organized bar over which

of those interests will have the capacity to determine the choice of personnel and the operations of the local legal system.

The basis of this argument is the view that elective prosecutors, particularly when related to political parties, will be motivated to dramatize themselves in the interest of political promotion. There certainly is no lack of dramatic examples of the Mr. District Attorney" who was able to go on to some higher office -- partly by virtue of his role as prosecutor. But they are very likely to be the same example used over and over again with a few additions over the years: Charles S. Whitman, Thomas E. Dewey, and William O'Dwyer, in New York; Earl Warren and Edmund G. (Pat) Brown in California; more recently Edward W. Brooke in Massachusetts. But these examples are unusual. Western Pennsylvania, for instance, is probably much nearer the national norm in that Allegheny County district attorneys (or others in the area) have had a remarkably unimpressive record in achieving higher office.

Moreover, even if dramatization is always at the expense of justice (which is by no means certain),one might note that this need not be closely related to elections--partisan or otherwise. If an officeholder believes that drama is useful to the purposes of his organization, if he takes those purposes seriously and if he has the capacity for drama, then drama there will be. In the law enforcement area, it would be fatuous not to notice the most dramatic of all such functionaries, the Director of the FBI. Nor is it clear that the non-elective administrator will always forgo the option to resign and run some other office (as Mayor-Elect Frank Rizzo has just done).

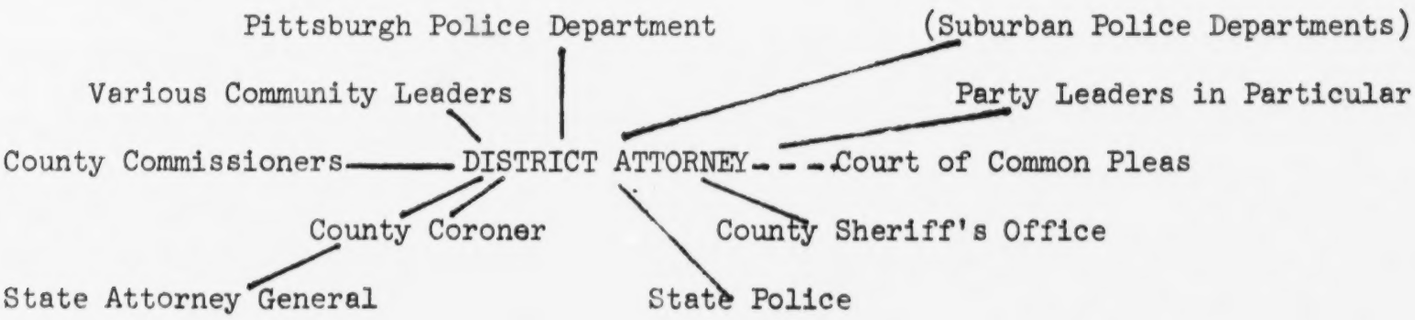
Still further, the Frank argument for "professionalism" means that the best judges of professional capacity are those presumed to be at the top of the profession itself. Thus, professionalism in this aspect of law enforcement is a call for giving over direction of the process to the organized bar. There are practically no known cases of local prosecution in which this move has

succeeded, so that it is not possible to evaluate from experience what happens if the bar achieves control. However, we may infer from other experiences with the organized bar. (1) Stuart Nagel, a political scientist at Illinois, has reported empirical studies that judges who have been associated with the American Bar Association tend to be more severe sentencers than judges who have not been so associated. Why this should be so is not clear, but it apparently is so. If there is "something" about the social world of ABA leading in this direction, we may suppose that it also influences lawyers who do not become judges--including those who might become prosecutors. (2) Although the social world is changing all the time, the general experience has been that the organized bar has been most attuned to the interests, current opinions and values of the upper-middle class and upper-class portions of urban society, in contrast to lower-middle class and lower-class portions of society. (There must be qualifications to this, of course.) If the organized bar, in this sense, were somewhat selective, then it would also follow that those whom it might prefer for prosecutorial responsibility would have been somewhat selected.

The really important questions concern the prosecutor's mode and manner of doing his job (and of deciding what job he is to do). There are bits and pieces from many jurisdictions, but the only systematic evidence that I have seen comes from a study of the prosecutor's office in metropolitan Seattle (King's County).[6] I rely heavily on that study here, elaborated or modified only to the extent that I have other information or that common sense suggests other possibilities. The big question that might concern civil libertarians, in particular, is whether the public prosecutor is intended to stand mainly as an advocate for one side, specifically seeking convictions in the adversary process, or whether the public prosecutor is intended to stand quasi-judicially with as much concern for the possible innocence of the particular defendant as for other issues. The evidence is debatable. The fact that so many cases are dismissed or disposed of before trial might suggest that prosecutors are not very

conviction-minded per se. On the other hand, this might merely mean that the arrest process brings them a great many people who could not be convicted on the evidence anyway, so that the prosecutor who gets rid of those cases beforehand is defending his conviction rate which is the number of convictions/number of cases taken to court. We cannot resolve the issue here, although from time to time a case with sufficient evidence of deliberate prosecutorial manufacture of evidence arises to cause doubts.

As far as the rest of the prosecutor's work goes, we do recognize that he is engaged chiefly in a bargaining relationship with the defense, with the police, and with the courts (although this more implicit than explicit perhaps). Modifying Cole's analysis to the Pittsburgh situation, one might note that it would look something like this:



Community leaders would enter the picture insofar as they helped to shape the atmosphere of expectations about what a district attorney ought to do, and party leaders would enter at least to the extent that they have to make judgments about who deserves nomination, how well he has done, etc. Police are central members of his network (although it possibly can occur, as it has sometimes in Pittsburgh, that the County Sheriff and the City Police or the State Police and the City Police will have conflicting interests) because he must depend upon them to bring him the cases. In principle, he might get his own, but as an everyday matter, he has not time nor men to do that. Moreover, he may make judgments about whether their cases should be prosecuted or will hold

water if prosecuted, but he is in a bad way if the cases they bring him will not, and obviously will not, hold water.*

Cole reported that, in his particular research situation, the actual contact with defense attorneys and policemen was chiefly a matter for the assistant prosecutors. (The prosecutor had closer relations with community leaders and with other elected officials of the county government.) The nature of the relationship can be seen partly on some simple issues, where the several parties do not have fully agreed interests. The interest of the police department is served by a clearance rate. The clearance rate is the number of crimes "cleared" by arrest, i.e. for which someone is arrested, over the total number of known crimes. From one presumption, the police department is doing a better job if it arrests a lot of people. But an arrest is not a conviction. The conviction rate is the number of convictions over the number of charges brought to court.

Imagine 100 crimes.

Imagine 40 arrests as against 20 arrests. 40/100 equals a 40% clearance rate, while 20/100 equals a 20% clearance rate. Who, in his right mind, would not prefer 40% success to 20% success. However, go further. Imagine that the police department gets a 40% clearance rate, but that half the arrests could not possibly stand up in court, while the other half could. If the prosecutor charged and prosecuted all 40, he would lose half of them. His conviction would be 50%. But if he charged only the 20 he was sure of, and got convictions in all cases, his conviction rate would be 100%.

In this particular respect, the police and the prosecutors go in opposite directions by natural tendency. For it is to the interest of the police to get

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*One Pittsburgher, a former assistant district attorney many years back, told me of his own chagrin as a new appointee. When he arrived at court, the detective who had made the arrest came and told him, "I don't think we have much of a case," meaning that he did not have sufficient legal evidence for a prosecution. The informant, however, was sure that the detective had actually taken a payoff from the defense counsel to throw away the evidence, but did not have at the time any basis for pushing it.

the maximum number of arrests, and let the blame for low convictions fall on the prosecutor. It is to the interest of the prosecutor to take to court the hard-core of sure cases, and let the blame for a low clearance rate fall on the police. As Cole says of King County, requests from the police for presecution may "stem from the fact that the prosecutor is thinking of his public exposure in the courtroom. He does not want to take forward cases which will place him in an embarrassing position." This is related to evidence (although Cole seems to separate it and treat it as a different proposition).

> Not only must the prosecutor believe that the evidence will secure a conviction, but he must also be aware of community norms relating to the type of acts that should be prosecuted. King County deputy prosecutors noted that charges were never filed when a case involved attempted suicide or fornication. In other actions the heinous nature of the crime, together with the expected public reaction, may force both the police and the prosecutor to press for conviction when evidence is less than satisfactory. As one deputy noted:
>
> 'In that case (murder and molestation of a six year old girl) there was nothing that we could do. As you know the press was on our back and every parent was concerned. Politically, the prosecutor has to seek an information.'

Still other factors enter. (1) Prosecutors sometimes refuse to accept police cases because they have to help regulate the backlog in the courts. The more rapidly the prosecutor accpets cases, the bigger the backlog. When some overload is reached, prosecutors become more choosy about which cases they will accept. (2) Sometimes prosecutors send back cases as a quality control method, i.e. to keep the police "on their toes".

Police, in turn, have their own devices. They may start the wheels to a person charged on a less serious offense, which saves them the options of (1) releasing him altogether or (2) working up better evidence. They may drop it. And, in the Seattle case, where some offenses can be handled through corporation counsel in municipal court, they go that route. If the prosecutor's office is large enough, or sufficiently decentralized, police may also take care of themselves by "shopping around" in the office to find the assistant who is sympathetic to the particular kind of case they want to make.

Generally speaking, the police and the prosecutors have an incentive on each side to stabilize the situation, to find ways each to help the other look good. In part, this means that the prosecutor will cooperate with the police in the methods they deem necessary for successful work, which is probably part of the reason for Jerome Frank's lamentation about prosecutors' condoning "third degree methods". It also means prosecutorial help for the police in discerning methods which will stand judicial scrutiny, although possibly averse to the spirit of judicial finding. And it means police cooperation in bringing these more obvious charges that are both melodramatic and probably successful. But it does not lead to more intensive work on the more complicated criminal problems, a matter to which we return later.

This discussion of the police-prosecutor relationship does make the point, which I cited earlier, that a "systems" approach to urban criminal justice makes sense in some respect. The problem, however, is that no one has yet defined a systems approach that resolves the natural internal contradictions. No one yet has defined a systems approach that makes policemen staisfied to have low clearance rates and perfect conviction rates on those who are arrested. Indeed, the chances are that people would say to police who behaved that way: "You are not doing your job; you should be arresting lots of suspects and letting others make the final judgments about whether the cases will hold." A complete discussion would go much deepter into the internal operations of police and of prosecutor operations, and into the interaction between them But it would also have to take better account of the court systems and of the detention-penal-probation-parole systems.

Some issues about courts are apparently stylistic, although they may be more than that. Thus, the President's Commission on Law Enforcement and the Administration of Justice said in apparent dismay that it had seen:

> . . . cramped and noisy courtrooms, undignified and perfunctory procedures, and badly trained personnel.

Somehow, that seems different in quality from the rest of its statement:

> It has seen dedicated people who are frustrated by huge caseloads, by the lack of opportunity to examine cases carefully, and by the impossibility of devising constructive solutions to the problems of offenders. It has seen assembly line justice.

It is quite possible that what lawyers think of as "cramped," "noisy," or "undignified" has no more to do with the quality of justice than a beautiful building, instead of a cramped old house, has to do with the quality of the college education that takes place there. That much may be mere comfort to the inhabitants or the fuctionaries. But there is some important question raised about the kind of attention that the defendant gets when he appears in the court. Undoubtedly, a profound influence is exerted when a judge puts a defendant on suspended sentence, as one judge in a major Middle Western city recently did, on condition that she should not apply for any further AFDC benefits!* Cole is, again, quite right in arguing that "the sentencing history of each judge gives (all) law enforcement officials an indication of the treatment a case may expect in the courtroom." The judge just mentioned above is the recipient of annual testimonial dinners from the local policemen's association, while -- in still another Middle Western city -- a trial court judge who is particularly strict in his interpretation of constitutional requirements has been the object of a recall campaign (which failed). ** Again, from the Seattle experience, one assistant prosecurot said to Cole:

> There is great concern (by the police) as to whose court a case will be assigned. After Judge _____ threw out three cases in a row in which entrapment was involved, the police did not want us to take any more cases to him.

*The original charge had nothing legally to do with AFDC, but the woman was an AFDC recipient.

*Both judges are real and are sitting at this time, but it would not be helpful to get into the problems of personalities associated with identifying them in particular.

This kind of observation makes it reasonable to believe that even the much talked of "backlog" problem is not quite so simple as it might appear. From some points of view, it is sometimes argued as if the backlog were a simple problem of inadequate processing and record-keeping machinery. In reality, the backlog problem is associated with several kinds of interests. (1) When the assistant prosecutor holds back a case, because he expects a different judge (and more responsive to the prosecutor's view) to be presiding next month, he is contributing to the backlog because he believes that the public interest will be served by a different disposition of the case. (2) When the defense drags out the case because it expects that witnesses for the prosecution will be harder to round up, they are also using backlogging as a rational strategy. (3) The commonest assertion about backlogging, of course, is that it arises from the "laziness" of the judges. This is implicit in Congressman Broak Adams' assertion that:

> Cleveland has one of the worst big city criminal backlogs in the country, with 1, 049 criminal cases pending in 1967. The accused in jail wait eight to ten months to go to trial, and defendants out on bail wait even longer. Yet Cleveland closes down its courts for the entire month of August. Pittsburgh takes two months off during the summer. Chicago, which has the biggest backlog in the country, has 114 new courtrooms, but on a typical day less than half these courtrooms are in use. On my recent visit to the District Court in Washington, D.C., on Friday, I found that the court worked a four-day week. Fridays are reserved by most judges for motions, which take a couple of morning hours at best.

There are still some other relationships in the court system, and these are essentially administrative, related to the requirements of the prisons. It has been reported that:

> When the number of prisoners gets to the 'riot' point, the warden puts pressure on us to slow down the flow. This often means that men are let out on parole and the number of people given probation and suspended sentences increases.

Again, such comments do validate the conception of a criminal justice system, if by that we mean nothing more than a set of perceptibly interdependent factors. This can now be seen, according to popular sources, in judges practices relative

to sentencing at all. The Wall Street Journal (November 3, 1971, page 1) comments on widespread judicial criticism of the state prison systems on the grounds that their actual internal conditions constitute excessive cruelty. Both Arkansas and Pennsylvania prison systems reportedly have been declared "unconstitutional", although what this means to their practical operations or to the rights of men still in them is a curious question. Even where judges have not gone to this extent, they reportedly have more and more opted for probation.

> From a statistical standpoint, the Philadelphia Department of Probation says judicial disenchantment with the penal system is largely responsible for a 38% increase over the past year in the number of people on probation. Last year, Philadelphia judges granted probation to 44% of the defendants they found guilty. Furthermore, the rate in some cities is as high as 50% or more.

There are still other aspects of the urban court system which prove less encouraging from the point of view of criminal law reform. Essentially, it is that the older reformers may have been right in regarding the urban trial courts as essentially adjuncts to the main political organizations of the metropolitan areas. Without going into insupportable conclusions, one may simply notice that this is the issue now being weighed in the Hanrahan prosecution. For in the Chicago metropolitan area, it is clear that judicial nominations are controlled by the regular party organizations. Moreover, there are realistic points of view from which this is not necessarily bad. It is not bad, at the least, that these nominations should be controlled by some agency other than the organized bar -- which would be the normal alternative. However, this presents troublesome problems when cases arise in which the vital interests of the party organization itself are at stake. This was the case when one judge sought to dismiss the special prosecutor and when a second judge is now faced with the problem of possibly dismissing the charges that the special grand jury brought against the regular prosecutor.

The main point which might be made, relative to police, prosecutors, courts, and other agencies is that each of them does have certain internal necessities, and

these internal necessities are not necessarily averse to the public interest. However, they do tend to produce a system that is "conservative", not in the ideological sense (although that may be true), but in the sense that is inherent in a system, i.e. that any particular change tends to threaten so many relationships that most people who are concerned are likely to conclude that the existing status is preferable to the pains of change.

The criminal law system also continues with little change because, contrary to the frequent expressions of commentators, there is very little public interest in the subject. Politically, "law and order" is not a subject that politicians can benefit from by much discussion for long.

It is common to argue that there is, in reality, a deep public concern about "crime" and "crime waves." (The argument has been most vigorously made by the political analyst Richard Scammon and his journalist- colleague Ben Wattenberg in The Real Majority.) There is no doubt something to this, but the truth is that "crime" is a very double-edged slogan that people can become apparently excited about, but tire of quickly. In other words, "crime" far from being the nucleus of a potential fascist state is useful for very short periods and then becomes a political bore. First, the historical basis of the argument and then the current basis.

Eli K. Price, and old Philadelphian who wrote about the consolidation of Philadelphia and its suburbs into a new metropolitan government back in 1854 laid some emphasis on the previous level of disorder as a factor leading respectable citizens to vote in favor of "metro" candidates. (Protestant Irishmen and Catholic Irishmen were then engaging in some riots which, on scale, were bigger than most anything seen in American cities in recent years.) Edwin L. Godkin, editor of The Nation in the late 19th century, once more turned to the impact of "crime" on American city politics. Steffens commented on the same thing shortly after 1900, and Daniel Bell in the 1950's has called attention to the

"myth" of crime waves. By that Bell means that crime was steadier than press reporting.

In more recent times, i.e. about the time the author of this paper was born, New York City went through the Seabury investigations which revealed far more details of corruption in high positions than the present Knapp investigations are yet revealing of corruption in the police line. As a result of the Seabury investigation, the Mayor of New York City (James J. Walker) was obliged to resign, and in 1933 Fiorella H. La Guardia was elected as a Fusion candidate, a reform candidate sponsored by Republicans (of whom LaGuardia was one), Democrats who had to have another party label for him since they could not support him as a Republican, and so on. But the interesting fact is that La Guardia, even as a Fusion candidate, was a "minority" mayor. O'Brien, the Tammany Hall ("bad") Democrat and McKee, the FDR, conservative, ("good"), Democrat split the Democratic vote between them and La Guardia was elected. That hardly seems like a popular uprising against either "corruption" or "crime".

Detroit may have had a slightly better example in the late 1930's, when a special grand jury investigation led to the indictment and conviction of its Mayor, his secretary, the chief (superintendent) of police (but not the commissioner), several members of the common council, and a number of policemen. Even that, however, is not clear, for the United Auto Workers was a rising power in Detroit city politics, and the new mayor certainly proved to be a pro-union man for the time being, as he also proved to be anti-black. In other words, my guess is that neither "crime" no "corruption" is the kind of political issue that the mythology of politicians alleged it to be.

But what is my current evidence. It is not conclusive, But the best evidence comes from Pittsburgh's sister city, Philadelphia. Perhaps Philadelphia is -- as Steffens claimed long ago -- "corrupt and contented." But some interestin

problems arise, nonetheless. Because of Mayor-Elect Frank Rizzo's tough, belligerent, anti-black reputation as Police Commissioner, a number of newspapers across the country have immediately described the 1971 municipal election in that city as a "law and order" election. One might agree that it was Mayor-Elect Rizzo's reputation as Commissioner that made him sufficiently visible that he could get nominated. But he was the Democratic nominee, and should win a Philadelphia mayoralty election except the Democratic nominee? Moreover, political analysts are accustomed to regarding an office as "safe" for him (or his party) if he wins it by 55% or greater. Possibly the final analysis of the vote will prove out differently, by my early analysis of that vote showed that the Mayor-Elect got a little bit more than 53% of the vote -- which is comfortable, in no danger of being overturned by a recount, but not a landslide as these matters go. <u>But if it were a law-and-order election, and if law-and-order were such a powerful vote-getting theme, then he ought to have won by a much greater margin.</u>* (It is not my purpose here to analyze that election, which can have no interest to Western Pennsylvanians, but my guess is that the Italian candidate finally broke through the Irish front which has dominated Democratic politics so long, and put to rout as well the liberals who uncomfortably could stand neither him nor the Irish regulars. This was much to be expected, since the Italians have hardly had their share of political power in Philadelphia yet either. And the factor of being anti-black, not "law and order" in any other sense, was probably far more important to the Rizzo vote.)

This is not to argue that nobody cares, but that what people care about and which people care has been overinterpreted with too little understanding too soon. James Q. Wilson helps us somewhat on this, when he reports that a

*The principle surely is simple. If I, weighing 140 pounds, stay in the ring with Frazier <u>or</u> Mohammed Ali very long, and then get beaten, <u>I</u> don't look bad for being beaten. <u>They</u> look bad for not beating me earlier and harder.

survey of the Boston area showed a strong concern for "improper behavior in public places" -- secular desecration I have called it -- which meant several things: "crime, violence, rebellious youth, racial tension, public immorality, and delinquency."[7]

In Wilson's survey, there seemed to be some basis for regarding this as not a code word for "anti-black", although some (possibly much) of that must have been present. The reason is that those who thought the Government ought to do "more to help" blacks expressed this concern as did those who thought the Government had done too much, and that blacks themselves were also very much concerned.

Crime certainly can be used as a basis for encouraging other actions. Two scholars have recently written a paper in which they show that the Cervantes Administration took advantage of "crime" issues in order to build up support for three fiscal measures: "a 1 per cent sales tax. part of the revenue of which was pledged for additional police for foot patrol duty . . ., a $15 million bond issue for completion of the city's street lighting program and a $3 million bond proposal for additional pretrial juvenile detention facilities."[8] Nonetheless, when they set out to discover if different crime rates affect citizens' attitudes, and when they set out to discover which citizens attitudes were affected, they got very little. Interestingly, their finding as to which citizens attitudes were affected at all were rather different from Wilson's findings. Wilson found that it was the older people who were more affected, while the two St.Louis observers found that it was the younger, the better educated, and the black.

What does this tell us? First, it tells us that we really cannot find any sustained interest in crime issues (and the likelihood is that if people thought they had to they would settle down to a life of careful self-protection, not going out at night, and so forth, rather than for some volatile political protest).[9]

Secondly, it tells us that we really cannot be very sure who is most anxious about crime -- although there are some clues that blacks are much more anxious than most newspaper commentators seem to appreciate. Thirdly, it tells us that popular concern about crime, being episodic and oriented to the dramatic, has never been informed by a sustained and intelligent political leadership discussion of what the issues are and what the options might be.

Virtually all public leadership discussion of crime and criminal law reform is at the level of witchcraft, be it "conservative" or "liberal" witchcraft, partly because issues have never been catalyzed and partly because the knowledge base is simply too slender. The knowledge base for public policy relative to crime and criminal law has to encompass three things: (a) value judgements about what is to be regarded as permissible and impermissible; (b) factual judgments about the degree of control or alteration that is possible and (c) factual judgments about the measures which will produce the desired control or alteration.

An effort to read the various arguments and data sets produced by law enforcement professionals and by professional criminologists leads to the melancholy sensation of sinking in a morass of meaningless debate. This can be seen in several major areas, e.g. capital punishment, marijuana policy, the absence of information about certain specific offenses (when we suppose that professionals who know their business would have the information), and the general problem of criminal statistics. I do not here mean to make a brief for or against capital punishment. Instead, my simple argument is that policy-makers presumably would need the best available information on capital punishment in order to make a decision, if the decision were to be other than as a matter of faith. (If a decision-maker truly believed that the law of society ought to be "an eye for an eye", then he would not need any evidence on the effects of capital punishment otherwise.) Suppose that the argument is that capital

punishment is a deterent to other potential murderers. Since we do not know how to identify potential murderers directly, we have to infer something from the general population. If some American states have capital punishment while others do not, if there are no important cultural dissimilarities between those that do and those that do not, and if those that do administer their capital punishment laws in about the same way, then it is reasonable to compare the capital punishment states (as a group) with the non-capital punishment states (as a group). If, for some comparable period, the incidence of criminal homicide in the non-capital punishment states is higher than in the capital punishment does have some deterrent effect on people who might commit murders. While the capital punishment debate has often been warm, I have yet to hear a carefully structured presentation along these rules of evidence that would bind both supporters and critics.

The same kinds of bizarre contradictions, with no clear meeting of the evidence, is now present in the debates on marijuana policy. There are two major questions. (1) Is the use of marijuana by private persons under unregulated conditions, sufficiently threatening to the individual persons or to society as a whole that such use should be discouraged by public policy? (2) If the answer is "no", then nothing remains to be said. If the answer is "yes", then the question is what policy measures would be fruitful to the desired end? The present debated between physicians and others is simply a cacophony, in no way clarified by citing the high moral purposes of rebellious young people, the uneforceability of the Old Prohibition, of the dirty and annoying dress habits of college students.

My third example of the present inability of professionals -- law enforcement officials or professional criminologists -- to offer constructive public leadership lies in some correspondence I have recently been carrying on with several people in university criminal justice centers, in the government, and in

the foundations relative to two offenses that I think are particularly important: armed robbery and burglary.

Why are they so important?

1. They bite particularly hard upon the lower-middle class and lower-class people of the metropolitan areas, although the structure of the insurance industry (and possibly people's attitudes toward police) mean that most of our data on these offenses relate to suburban locations.[10] (I shall return to this point later).

2. But they are also important because they are pre-eminently rational offenses, compared to homicide, aggravated assault or forcible rape. The last offenses may take place between complete strangers, but they are much more likely to develop out of complex situations between people who know each other -- and in situations where no amount of preventive action on the part of the public authorities would have been preventive. On the other hand a man who goes out to rob somebody means to do so; and a man who enters your house, apartment, office, store, or shop means to do so. If he has any brains, what he wants is some item of commercial value -- and he wants as little trouble as he can get. However, the fact of robbery and burglary spread a good deal of anxioty and fear amongst people, so that is is a serious challenge to the public order. From this point of view, one might say that a police department would be well advised to choose -- at least for a time -- to give maximum effort to the solution of burglary and robbery cases in a genuine way. In order to think about this problem, therefore, I began to write a number of knowledgeable people asking for information on persons carrying out studies.

One correspondent, now the chief legal adviser to a major police department, wrote back that he was glad to see social scientists experss an interest in something important like this, but that he really did not know of much information. In an effort to be helpful, he did refer to the head of a criminal justice

center who had had long experience with criminal law problems.

This man,in turn, referred me to two other people, one of whom had done some contract work for his center. One of these did not respond but the other did provide at least a little fresh information. The correspondence went on, and is actually going on at this time. But the burden of the letters indicate that Arnold Sagalyn, the former chief law enforcement advisor to the Secretary of the Treasury, described the situation appropriately in saying:

1. that few "of the police departments surveyed were found to be collecting analyzing and utilizing the kinds of statistical data which would enable them to have a better understanding of what kinds of robberies occur, when and where they occur, and what the principal determining factors are. . . ";

2. that much of the statistical information is out of date, e.g., information failing to show that bank robbers today tend to be young amateurs, instead of older professionals as in the past; and,

3. that the validity and value of robbery information is often limited even by geography within a single city.

The following quotation may be appropriate on this last point:

> Available studies and data indicate that the problems of robbery vary greatly not only from city to city, but also from neighborhood to neighborhood. For example, the FBI reports that nationally 58% of all robberies in 1968 occurred on the street. A study by Andre Normandreau of robberies that took place in Philadelphia between 1960 and 1967 showed this percentage to be nearer 47%, while another recent study, of the high-crime Second District in Chicago, found that street robberies accounted for 65% of all the robberies in that district.
>
> The discrepancy and problem described above is dramatized by studies in New York City involving two different precincts. In the Fiftieth Precinct, a white, middle-class area, street robberies accounted for 75% of the robberies. Yet in that same city in the Fourty-fourth Precinct, which is a changing neighborhood, data collected at the same time showed only 34% of the robberies occured on the street. Sixty-six percent of all robberies in this precinct took place inside buildings--that is, hallways, lobbies, and elevators of apartment buildings, which accounts for a large part of the housing in this area. [11]

In other words, if Sagalyn is to be credited, neither the law enforcement agencies

nor the professional students of law enforcement provide much understanding of the criminal problem. The problem is even more complex when we notice Sagalyn's summary of the studies of deterrence of robbers. Sagalyn mentions three studies. One, by Franklin P. Huddle of the Library of Congress,

> questioned whether bank robbers do indeed perceive clearly the risks and penalties that society is prepared to impose and whether such offenders do in fact act rationally on the basis of this perception. [12]

Huddle apparently asks this because bank robbers do have a high rate of apprehension and get severe sentences, yet the deterrents do not deter. Another study showed that offenders either did not fear the consequences of aggressive patrol and other such police tactics, or else they tended to block out the consequences at the time of commission of the offense. Finally, an administrator at an Illinois state prison

> found that the only significant deterrent to bank robbers examined appeared to be the closeness of a police station to the bank. Neither police patrols nor the capability of police response was found to be considered a deterrent by those engaged in bank robberies. The large amount of cash available, the ease of access and of getting away from the scene of the crime seemed to outweigh other considerations. [13]

But the very ambiguities in these explanations stick out at us. Nobody answers whether people fail clearly to perceive the penalties, or whether they perceive the penalties and think it worth the risk. That makes all the difference in the world.

All this comes to a head most in the debates over criminal statistics. Being neither criminologist , nor law enforcement official, nor statistician, I am sure that there are aspects of the debate that elude me. But the chief issue is whether the presently available crime statistics provide a sufficient basis for the broad policy judgements that are called for. The basic document is the annual Uniform Crime Reports. issued by the Federal Bureau of Investigation on the basis of information supplied to them by local law enforcement

officials around the country. The most important and dramatic part of the Uniform Crime Reports is that they are constructed out of information about the seven offenses (murder and nonnegligent manslaughter, forcible rape, aggravated assault, robbery, burglary, larceny over $50, and automobile theft) that make up the Crime Index. (These also are known as Part I offenses.)

Broadly speaking, private statisticians and others are critical of the Uniform Crime Reports from two points of view. The first is due to certain difficulties in police practice. (Remember that the police departments file their own reports.) Because legal definitions of these offenses vary, it is hard to be sure at all times that the same events are being reported the same way. (There are other difficulties in making sure that the information is comparable over the span of years, and thus tells you whether and how much crime has increased or decreased. Still another difficulty is the knowledge that there is unreported crime, with the result that one cannot be too sure what the real level is.) The arguments about statistics are not trivial, and citizens should make some effort to understand them, at least as much as they would make an effort to understand their own private bank accounts. For it is not possible to make valid judgements without some sense of the proportions.

The problem of inter-city comparison is serious, as can be illustrated by the ups and downs of Chicago and New York robbery comparisons from the 1930's into the 1970's. Common sense somehow forbids one easily to believe that Chicago, with one-half New York's population, could have three times the robberies. But that is what was being reported in 1935, and Chicago continued to report more robberies than New York for the next 15 years. The FBI actually decided not to publish New York's figures, because it did not trust them. New York then adopted a new reporting system. Instead of calling the station house for a robbery complaint, you called a central number. The robbery figure rose 400%! Which surely can only mean that the complaints that were called in were better and more completely reported. (Incidentally, the burglary rate

went up 300%.) Then Chicago improved its reporting and reported more robberies than New York. Then New York changed its system again, and went into the lead once more. No matter which city really has more robberies, it beggars the imagination to think that this much variety could possibly exist between these two cities. [14] However, the more serious criticisms are directed at the FBI's collection and analytical procedures. The claims essentially are that (1) there is need for a better set of classifications, since offenses can be classified in different ways and since--as we suggested above--some non-Index offenses (arson) may clearly be more harmful to the victim than some Index offenses (auto theft); (2) the different offenses in the Index are not weighted when the totals are rendered; (3) the Index includes both efforts at what would be crime and successful completions, thus to some degree exaggerating some aspects of the situation; (4) multiple offenses are neglected by the fact that the FBI asks the police to report only the most serious; (5) changes in the total volume of crime are given too little prominence, relative to changes in rates; (6) the arrest statistics on which so much is based are inadequate; (7) the data are often interpreted too dramatically, for what they really reveal, and, (8) they do not provide sufficient information for policymakers. [15]

We should not fail to recognize that much academic criticism of the Uniform Crime Reports seems almost to stem from a deep hostility to the Federal Bureau of Investigation itself. It is hard to see, however, the sense in which critics think they are achieving much by showing that the FBI actually underestimates the volume of crime. If the FBI had any difficulty at appropriations time, this surely would be all that it would need. More to the point is that the Uniform Crime Reports, though used as a basis for alarm, also provide no clue as to what decisionmakers ought to do in order to reduce crime. That is the really key issue.

Professionals' response to their knowledge limitations is very much influenced by political (that is, ideological or philosophical)attitudes that shape the theories of crime they are inclined to accept, and that they are determined to protect, even if it leads to useless social policy proposals. Basically, there are two major attitudes toward theories of crime. One major set (see I following) places the "causes" of crime inside the offender, while the other major set (see II following) places the "causes" of crime in "society." Each of these can be divided further into two categories IA and IB and IIA and IIB. One side (IA) of the "offender-centered" interpretation treats the offender's behavior as essentially unpredictable and requiring, therefore, some adaptive "treatment;" while the other (IB) treats it as essentially predictable and requiring, therefore, some form of social control. Of those who find crime to be society-centric there are those who attribute it to some form of injustice or other social provocation, in contrast to those who attribute it to laxity or some form of social inducement (by failure to offer sufficiently strong negative inducements).

	I Individual-Centered	II Society-Centered
unishment Conservative)	Predictable	Laxity
orrective Liberal)	Unpredictable	Injustice

Each responds to the other by denying the other's basic assumptions. Thus, among the new criminologists, Edwin M. Schur accepts the view of America as a "criminal society" and offers five hypotheses to explain why it is a criminal society.

> America is a criminal society because it is an unequal society.
>
> America is a criminal society by virtue of its involvement in mass violence abroad.

> America is a criminal society because of certain emphases in our cultural values that help generate crime.
>
> America is a criminal society because it has "created" much unnecessary crime.
>
> America is a criminal society precisely because it has adopted an unseeing and unworkable orientation to crime problems. [16]

Please remember that these statements are all intended to help explain why certain patterns of behavior--illegal under the criminal law--exist. From this point of view, much of the case advanced above is the sheerest nonsense and indicates the bankruptcy of liberal (or radical) criminologists, no less than of conservative ones. The statements make no sense particularly until it is clear what aspects of criminal behavior they are intended to explain. Certain ones are fashionable, but utterly useless.

(1) It is possible to say that a society contains much criminal behavior because of its internal inequalities, provided that we suppose that people resent (or wish to escape) being in a subordinate position--and are prepared to adopt illegal means to do so. Even so, if the statement is to have much meaning, we might ordinarily suppose that a society that is a little bit unequal will have a little criminal behavior, more unequal, more criminal behavior, etc. On this score, it is not clear that the United States between 1900 and 1940 was more inequalitarian than was the United Kingdom in the same period, yet there is apparently no doubt that the United States had a considerably higher level of homicide, burglary and robbery. On the other hand, inequality in the United Kingdom, whatever its present level, is undoubtedly less than it was before World War II, yet homicide burglary and robbery are for the first time commanding sufficient attention in the United Kingdom to provide the political material for British policemen's organizations to demand stiffer sentences and the right to bear arms for themselves on duty.

2. The statement that America is a criminal society because of its involvement in mass violence abroad (war) is another that makes no sense. If

that were a judgement on the legitimacy on the war itself, one might understand the rational basis of the statement--even if one disagreed. But the statement makes sense in its present form only by supposing one of two things: (a) the knowledge of participation in the war, and the socio-psychological stresses associated with that, lead more people to engage in violent criminal activity within the United States; or (b) the war produces people who, having been engaged in it, are sufficiently detatched from normal social moorings that they engage in violent crime. The latter statement would pinpoint violent crime rises precisely to Viet Nam veterans, which Schur does not do. The former could reasonably be true, or so it might seem, [17] but it would not make sense unless Schur could make the following statement: violent crime inside a nation rises and falls with its involvement in mass violence abroad (war). He would have some authority for such a statement if he could show it to be true for all countries during the Second World War, with continuation (at higher or lower levels) in France during the Indo-China War, in Holland during the Indonesian War, in Israel during its combats with the Arabs, etc.

The idea that crime exists as a function of cultural values seems plausible, and requires no comment at this time. But the idea that crime exists because it has been "created" is extraordinarily superficial. Let us consider a particular action: taking another man's life. If the law does not forbid taking another man's life, then obviously "murder" does not exist in the legal sense. But if we live in a situation where there is no law on the subject, and where life-taking is common, that is anarchy. If we then adopt a law, we have classified the action, not created it. Now the problem in understanding the incidence of crime is to understand why the action exists, how it is created, and to this its classification is a distinctly secondary idea. Obviously , if we remove the classification, we remove the basis for public intervention--and in that sense we make the situation "less criminal." But just as obviously,

most of us would not want to remain in a city where it became just as legal to point a gun and ask for my money as to hold out an open palm and ask for my money. By the same token, hardly any of the liberal criminologists would treat seriously the argument that the situation would be improved if one eliminated laws against murder.

On the other hand, conservatives do not offer superior wisdom on this subject. Where liberals prefer to remove those constraints that they see as binding "underdogs" to modify social constraints in a professedly egalitarian direction, and to reduce constraints on varieties in life styles, conservatives tend to move in the reverse direction. If anything is clear about American conservatism it is the strength with which its sense of secular desecration may be activated, and the degree to which it is willing to go in constraining life-style behavior and civil liberties in the interest of a proper society. Strikingly enough, neither approach offers much useful guidance on the short-term and middle-term policy issues, i.e., how to improve the level of safety in the community and the level of fairness in the operations of the mechanisms of justice.

Some Options

There are a large number of important problems which have been neglected, or just barely mentioned above. This list of problems not properly discussed would include the underworld (about which I simply do not have sufficient detailed knowledge), the problem of "victimless crimes" (about which I am less latitudinarian than the criminologists appear to be today), and the whole subject of prisons (their reform, abolition, maintenance, etc.) All these issues clearly merit definition and further discussion.

As for the issues raised above, the following options seem to merit some consideration.

1. The most important thing is to define public order objectives in such a way as to transcend the racial issues that presently lie just underneath so much that is said. Policymakers need to dispel, not encourage, the illusion and the delusion that the incidence of criminal behavior itself is a form of racial conflict. That illusion serves to confound the problem of law and order (as crime control) with the problem of racial conflict. In reality, criminal behavior, even if limited to (or particularly if limited to) the Index offenses is primarily an intraracial problem. It is chiefly an affair of white offenders against white victims, of black offenders against black victims, and of a small amount of interracial crime. Merely to illustrate the point, the Eisenhower commission's Staff Report on Crimes of Violence shows the following proportions of the following offenses were either white-white or black-black in a 1967 survey of victims:

Criminal Homicide:	89.7%	(Table 3, p. 267)
Aggravated Assault	89.8	(Table 6, p. 271)
Forcible Rape	85.2	(Table 9, p. 275)
Armed Robbery	50.6	(Table 12, p. 279)
Unarmed Robbery	55.0	(Table 15, p. 283)

Indeed, the distinction between the genuinely emotional offenses (homicide, assault and rape) and the rational economic offense of robbery is quite clear.

The available evidence, and common sense, indicates that blacks generally have strong anxiety about these offenses , for the good reason that they are vulnerable to them. The following table makes the point clearly on the basis of a national analysis.

Question: How safe do you feel walking alone in your neighborhood after dark?

	White Men	White Women	Black Men	Black Women
Very	65%	35%	33%	16%
Somewhat	22%	24%	25%	19%
Somewhat unsafe	9%	23%	22%	28%
Very unsafe	4%	18%	20%	37%

44

Adapted from National Crime Commission: Field Surveys on Victimization

The table says that it is black people, much more than white, who are fearful as to their physical safety, and a further study of the collaterial tables (which will be foregone here)suggests that they are right to be so. This is so even for net property losses, not merely for physical harm. When people were asked , not whether they were afraid, but whether they had actually lost anything, it was possible to compute median net property losses. (See Table 8, p. 19 of the Field Surveys done for the President's Commission on Law Enforcement, II)

Property Loss

	Persons Having Income $6000 or More		Income Under $6000	
	Black	White	Black	White
Median	$50	$30	$50	$34

No matter how deeply we go into this, we will find that something like this pattern holds. What it says is that , for a complex of reasons, the concept of equal protection of the laws does not yet extend into black communities. From this, something else follows. It follows that policymakers who begin to take seriously the problems of equal protection , not as scare devices but as realistic social problems, will be likely to find a serious interest in such communities. It also follows that the division between urban black populations and urban white populations, particularly white working class populations whose interests are sorely neglected in these matters, are not in fact incompatible.

2. There is a need for much more serious attention to the incidence of white collar crime (fraud , etc.) as practiced in lower-income communities. This is not only a major privation, but a major source of disenchantment. In the criminal justice system as it works, this would require a major reorientation if undertaken by police. A more appropriate location is in the offices of prosecuters, whose grasp of the pertinent law is, in any event, presumably superior.

3. There is a need for a more deliberately-based policy, in law enforcement of choosing at least some offenses to be the subject and focus of concentrated attention. The "strike force" idea as developed by the Department of Justice may be somewhat pertinent. The point is to choose to place maximum emphasis on those offenses, which need not necessarily be index offenses, that cause extensive social harm--and that are sufficiently rational (calculated) that they can also be estimated in advance and made the subject of planning.

4. The area of severe social conflict requires more attention, precisely for the purpose of reducing the likelihood that it should get into the criminal domain--where administrative personnel are inherently incapable of dealing with the questions at stake. However, there should be more attention to various private mechanisms--similar to arbitration and mediation as practiced in commercial life--to screen and reduce the burden on public decision-making machinery.

5. A critical policy option is to seek early movement that would result in an arms-free metropolitan society, by building upon a series of short-term arms control and disarmament measures. [18]

It is obvious that fear and insecurity are intimately connected with physical threat. When any two groups are so distrustful as blacks and whites are now, it is very little immediate use advising them to change their fundamental and long-term attitudes. The short-run necessity is to reduce the sense of threat, thus making possible an environment in which conflicting parties may have the options to adjust to new states of fact, which in turn may modify attitudes.

White fears of black violence are so well advertised that it is hardly necessary to say more--despite the fact that remarkably little black violence has been visited upon whites. But what is seldom understood is the realistic basis for black fears of white violence. The intermediate objective

should be, thus, to enhance the future possibilities of a metropolitan community. One of the methods to this end is a public policy calculated to afford physical security to all persons, specifically. clearly and crucially black persons no less than white. Each side must be able to perceive, and to be realistic in perceiving , that a knockout blow--a first strike--by the other is improbable, regardless of the desires of the other, because the other simply cannot have the capacity.

It is in this context that a serious attention to gun control becomes essential. Milton Eisenhower's estimate that there are about 90 million privately held guns points up the problem. This total of 90 million weapons (25 million handguns and 65 million long guns) means that on the average just about every other person owns some type of firearm. This does not mean that they particularly need them, nor that they especially want them. Instead, they are more likely to keep them out of inertia or out of fear.

The idea of domestic arms control-and-disarmament has had even less success or appeal than its international counterpart, yet is is a central element of rational thought about "community goals." The chief policy problem is to be very clear about what is being proposed and why. What is being proposed is a system of registration and licensing calculated to remove private handguns from circulation, much as private gold was removed from circulation in 1934. The problem of hunting weapons is a little more complex, but I come to that later. There are two reasons.

a. From the conventional law enforcement view, the reduction of private weaponry would contribute considerably to the safety of the public and of the police by reducing the likelihood that anybody would be in a position to "lose control" and kill somebody, let alone do so purposely. (The practical questions concern our ability to control not only guns, but gun substitutes, such as explosives.)

b. The more important reason is to reduce the chance of black-white

escalation, by reducing the capacity they might have to do each other harm, regardless of their states of mind.

I do not here mean to deal with the idea of arms control as a "subversive plot," although it must be apparent that I could not accept that view. Nor do I mean to try to evaluate the constitutional issues involved in the "right to bear arms" argument. Since lawyers come on both sides, I will merely assume that the constitutional arguements are open, and comment on the policy merits and demerits. However, it simply cannot be maintained, as a matter of common sense, that "the right to keep and bear arms" should be subject to no limitation. That right, presumably, is no more valid than the crucial right to private property, yet there is no belief that the right to private property means that one is entitled to hold that property in the form of gold. On the contrary, the right to hold private supplies of gold has long since been reduced--except in certain marginal cases (jewlry, etc.)--in the interest of national economic policy. Similarly, the right to free speech clearly does not mean the right of a ham radio operator to use the airways without limitation, but rather that he may use the airways under certain well-defined conditions.

Even more important than the strictly constitutional questions are the political questions. As the constitutional complexity is widely advertised, so the potency of the highly organized gun lobbies is well advertised. As far as I know, the extent to which these lobbies have real support in the wider population is uncertain. But one study, by a young political scientist at Pittsburgh, Michael Margolis, provides some reason to believe that these lobbies popular support is overrated. Margolis' compared gunowners, people who lived in gun-owning households but who were not themselves gun-owners, and non-gun-owners (in non-gun households). As might have been predicted,

gun-owners were less favorable to various controls than were non-owners.

> Considering the furor made by anti-gun control organizations whenever new regulations are proposed, the level of support for specific new gun control regulations among gun owners is surprisingly high. Nearly two-thirds of the gun owners favor testing hunters before issuing licenses, 56 percent favor a 48 hour 'cooling off' period between purchase and delivery of a rifle or shotgun, and 50 percent favor registration of handguns. A majority of both groups of non-owners favor each of these proposed regulations.

In other words, if Margolis' Pittsburgh survey is at all representative, we can be sure that there is at least no passionate attachment to unfettered gun freedom. Most people simply do not have an intensive interest in the matter, even if they themselves have guns. Margolis buttresses this by analysis which indicates that at the minimum, Senator Joseph S. Clark's strong gun control position--for which he was vigorously attacked by sportsman's groups--probably lost him no votes in Pittsburgh. (His opponent was thought to be "soft" on gun control.)

> To begin with, only 35 percent of the voters claimed to know either candidates' position. Of these fewer than half attributed "a great deal" of "some" influence to these positions in making their voting choice. Those attributing such influence split two to one favoring Clark's position over (his opponent's). The data imply, therefore, that if anything, Clark's position on gun control helped rather than hindered him in Pittsburgh.

However, as Margolis' study indicates popular support for keeping private firearms so widespread in the population may be much less extensive than we have, in light of such figures and the vigor of the gun lobby, believed. The private keepers of firearms can be divided into two main categories: those who have arms for legitimate purposes and those who have them for strongly doubtful or clearly illegitimate purposes.

I have seen no studies of what gun-holders do with their weapons, but the guess on which I would bet is that a substantial number of the weapons are held by private persons who do not use them or carry them, except on very rare

occasions. They have weapons to which they have no great attachment, and would not be particularly disturbed if those weapons were surrendered. And, frequently enough, could not find them on the spur of the moment were a robber coming through the window. They are not anti-gun. They just are not that interested.

A second category of legitimate weapon-holders are those people who do have reason to keep weapons immediately available, or even to carry them: merchants, real estate brokers, sometimes even politicians.* A third category are people whose weapons are immediately available, though they do not commonly carry them, and are brought out for frequent or regular use. Hunters probably account for more of this category than any other. It is very likely that some people in the second category and most people in the third would have very strong attachments to their weapons.

The reason that the weapons held by legitimate owners are important is administrative. There is no way to impose a control on the whole weapon supply system unless one can be sure that weapons will not move out of one set of hands into less legitimate sets of hands.

Consequently, the practical problem is twofold: (a) to create a climate of opinion in which most of the legitimate gun-holders would understand why their holding weapons works against public order; and (b) to create sufficient assurances and incentives that they will not mind ceasing to hold such weapons.

However, to think practically about these matters requires a focus on those small, but important, groups which are convinced that they do need weapons. Two of these groups, police officers and street commandoes, tend to interact with each other, creating an atmosphere of hostility which then absorbs the attention

* Two or three years ago, the Detroit newspapers ran a list of politicians who had licensed pistols, and one congressman said "yes", on his making the rounds he sometimes had to go into some pretty rough places, where one never knew what would happen.

and energy of many other people.

If there is no apparent conflict of interest between white working-class and black interests, with respect to the effective enforcement of the criminal law, there is a real conflict of interest between police officers and blacks, particularly young black males. That is apparent in every metropolitan area, and constitutes an important policy problem. Not a mere problem in "human relations" or "police-community relations." The essential case to be made is as follows. (1) There is a common supposition that the era of urban violence is "over". But it is more reasonable to believe that there is a "lull". (2) If this is so, then one should expect after the lull a somewhat heightened form of combat, involving relative few individuals directly, but essentially pitting police officers and black "street commandoes" as more or less opposing teams.

The reason is that the police are the one social group who have some legitimate claim to be armed and who are exposed to danger. It thus makes sense to say that, as a matter of public policy, we will impose the severest sanctions upon those who visit physical harm upon policemen, provided that policemen themselves be doing their duty in conformity with legal requirements and common denceny.

This in turn would liberate us to make certain needed changes in police weaponry as well. The idea of making changes in police weaponry will not make sense unless policemen know that they have full protection of public authority. But changes to restrict police weapons are essential. New policies are needed because unwise police discretion may have severe domestic consequences. The imposition of new restrictions on private weapons must be calfribated to the changes in police weaponry. Naturally, there will be some situations in which firearms will have to be used by law enforcement officials. Nothing about the disarmament idea requires us to be naive. But if we are to face these new situations,

then new ideas will have to come in training, in new weapons of a non-lethal variety, and in administrative style. Instead, off-duty officers might be obligated to check their weapons into an armory room (as in the Army) when going off-duty. It may no longer be necessary or profitable to operate on the supposition that the officer might have to use his weapon, even off-duty, so frequently as to require the possession of an off-duty weapon. Decisions about police use of firearms should be advanced to the highest administrative level possible. In "ordinary" cases, firearms should be used only for the emergency defense of the officer under the control of a senior officer on the scene. It is grossly unfair to policemen, so many whom are very young men, to ask them to decide alone who should be killed and who should not. Above all, "riot" situations should -- in the manner of Presidential control in the military -- under the direct control of the political authorities, and not delegated to lower levels. It seems appropriate to assert, for the first time in urban hsitory, the principle of civil political control over domestic coercion, much as we have also asserted the principle of civil political control over military action.

The precise administrative and institutional measures remain to be developed but the following merit consideration: (1) an automatic inquiry might be conducted in each instance of death following police use of weapons, but this inquiry should be more in the nature of that that the aviation authorities hold following a plane crash, and less in the nature of a trial;[1] (2) possible adaptation of the ombudsman concept for application in this specific set of circumstances; or (3) the development of a constantly changing corps of civilian observers of police work, who would have no authority to issue command, but complete authority to enter any precinct or station house and request to be shown any aspect of the operation at all; and (4) the development of a system of reciprocal deterrence by assinging most black officers not to black areas, but to white areas and by identifying to each officer those of his colleagues assigned in his own residential area.

In addition, it would make sense to seek an increase in public responsiblity for firearms policies. Such policies presently are based upon little more than intuition, with little consideration of the ends to be achieved or of operational necessities.

Police departments might well emulate other governmental agencies in coopting the private citizens' advisory committee or task force, the purpose of which is to review a policy and to consider the technical means of serving the policy ends.[5] It would be useful, for instance, to have such an advisory committee review the extent to which (a) policemen are actually threatened in the performance of duty -- for it is doubtful if most such threats presently are reported, (b) policemen actually are obliged as they see it to draw their weapons, (c) policemen actually fire their weapons, and (d) policemen actually injure or kill other people in the line of duty. Such knowledge would establish a much better basis for consensus about policy, and might more adequately form the basis for legislative action.

If one is to consider limitations on the holding of private weapons, it is also essential to consider the administrative practicality of various limitations. On the face of it, one might argue that no gun legislation now could be effective if every member of Congress, the big city councils, or the state legislatures who holds a private pistol were -- on an announced day -- to surrender that weapon to the authorities in full view of television! The reasonableness of such a gesture would be clearer if people understood how much accidental harm is caused by people like themselves, with no malice intended, and communicating that fact is one important problem. It would even be reasonable to consider monetary incentives, such as a massive public purchase program, to persuade people who haven't touched the weapon in the last 24 months to hand it over altogether.

From such a combination of symbolic and pragmatic measures, public policy might also more to a program of storing the sorts of weapons for which people have a legitimate use other than self-protection, e.g. hunting rifles

As a simple measure, the Federal building (or local post office) in each city might be designated as a private weapons storage area, in which individuals might deposit their weapons (as they deposit papers in bank storage vaults or as soldiers keep their assigned weapons in arms rooms except when on duty).

State and local governments have a very important role, insofar as privately-held weapons are subject to licensing. If a license is a previlege, rather than an absolute right, then all licenses might be revoked and criteria for new licenses made clearer and more precise. This seems reasonable, for if one does not have an absolute right to drive a car or to operate a food-dispensing service as a means of earning a living, then one surely cannot have an absolute right to the gun license. Obviously, the non-legitimate gun holders will, if sufficiently motivated, find means to evade the licensing requirement. But that is precisely the point. Just as it would make sense to impose sharper penalties for gun-caused killing (contrasted to similar killing without guns), so it would make sense to impose sharper penalties for the mere possession of unlicensed weapons.

The public record indicates that the armory of the Panthers (at any rate) is trivial, compared to the armory of certain private white groups (the so-called Radical Right).

Federal gun control legislation ought to be directed, with great precision toward possession of such weapons. Hunting is a legitimate enough activity, and it is to be expected that practical problems will arise when people with non-legitimate purposes hold rifles, claiming that they only mean to hunt with them. But there is no justification for a civilian holding grenades or machine-guns, and the same principle which justifies anti-bombing legislation also justifies a serious administration effort to detect and disarm such groups, and to shut off the flow of weapons to them.

Obviously, if those people who choose voluntarily to yield up weapons, or who have weapons only for legitimate use under controlled situations, see that the pattern of law is not being enforced, their own discomfort will rise and the whole process become less workable. The natural consequence of this, therefore, is that both the design of legislation and the practice of administration must be directed toward efficient discovery of violations and severe sanctions against the same. Some process of the sort outlined here would make an important contribution toward the creation of an essentially arms-free society which is its purpose.

FOOTNOTES

1. See remarks by Congressman Brock Adams in the symposium edited by Robert Lee Chartrand, Hope for the Cities, New York: Spartan Books, 1971, at p. 89 relative to New York City.

2. Alfred Bettman, "Criminal Justice Surveys Analysis," in U. S. National Commission on Law Observance and Enforcement, Report on Prosecution, Washington: Government Printing Office, 1931, 39-221.

3. Lewis Mayers, The American Legal System, New York: Harper and Row, 1955.

4. In Re Grand Jury Investigations . . . City of Pittsburgh, 365 Penna. 330 (1950); 99 University of Pennsylvania Law Review (1951), 826-829; 24 Temple Law Quarterly (April 1951), 445-448; 33 Temple Law Quarterly (1959), 79-88; and 37 University of Virginia Law Review (19), 131-132.

5. See the Wickersham Commission's Report on Prosecution and the appended Bettman study of the surveys of criminal justice.

6. George F. Cole, The Decision to Prosecute, (Unpublished Ph.D. Dissertation, Political Science), Seattle: University of Washington, 1968. Another study along these lines is being prepared by Professor Linda Carstarphen (University of Maine), but I have not yet had the opportunity to see her actual material.

7. James Q. Wilson, "The Urban Unease," in Henry J. Schmandt and Warner Bloomberg, Jr. (eds.), The Quality of Urban Life, New York: Sage Publications, Inc., 1969.

8. E. Terrence Jones and Edward C. Dreyer, "Environmental Influences on Electoral Attitudes and Behavior: The St. Louis 'Anti-Crime' Referenda," Paper, Midwest Political Science Association, April 29 - May 1, 1971, 1.

9. On patterns of adaptation of an environment in which crime is high, cf., U. S. President's Commission on Law Enforcement and the Administration of Justice, Field Surveys I and II (on victimization), Washington: Government Printing Office, 1967.

10. In this respect, I am obliged for ideas developed in correspondence with Stephen W. Hartmann.

11. Arnold Sagalyn, The Crime of Robbery in the United States, Washington: National Institute of Law Enforcement and Criminal Justice, 1971, 1-2.

12. Ibid., 17.

13. Ibid.

14. This is taken from a discussion by Edwin M. Schur, Our Criminal Society, Englewood Cliffs: Prentice-Hall, Inc., 1970.

15. The most responsible and lucid discussion I know is in, Donald J. Mulvihill and Melvin M. Tumin, Crimes of Violence; Staff Report to the National Commission on the Causes and Prevention of Violence, Washington: Government Printing Office, 1969, Vol. 11, Chapter 2.

16. Edwin M. Schur, Our Criminal Society, Englewood Cliffs: Prentice-Hall, Inc., 1969, 16-20.

17. The one empirical study that tries to make this case, that I know about, is Elwyn Powell, The Design of Discord, New York: Oxford University Press, 19 . I do not recall that Schur ites or appears to know of this study, which offers better evidence for his case than he does.

18. The following pages are largely a condensation of ideas developed in, Matthew Holden, Jr., The Republican Crisis, San Francisco: Chandler Publishing Company, (Forthcoming 1972), Vol. I, The White Man's Burden.